

APPEAL NO. 041113  
FILED JULY 1, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing (CCH) was held on April 6, 2004. In (Docket No. 1), the hearing officer determined that the respondent (claimant) sustained a compensable injury on (date of injury for Docket No. 1), and that the claimant had disability resulting from the compensable injury sustained on (date of injury for Docket No. 1), from November 27, 2002, through the date of the CCH. In (Docket No. 2), the hearing officer determined that the claimant's compensable injury sustained on (date of injury for Docket No. 1), does extend to and include herniations to the cervical spine, and that the appellant (carrier) waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022.

The carrier appealed the adverse determinations based on sufficiency of the evidence grounds. The claimant responded, urging affirmance of the hearing officer's determinations and asserted that the carrier's appeal was untimely. The carrier responded to the claimant's response and asserted that it received the hearing officer's decision on April 23, 2004, that it appealed within 15 days of receipt of the hearing officer's decision, and that therefore its appeal was timely.

DECISION

Affirmed.

We first address the question of the timeliness of the carrier's appeal. Records from the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the parties on April 21, 2004. The carrier's copy of the decision was picked up by the carrier's representative on April 22, 2004, from the carrier's representative box located at the Commission's main office. Pursuant to Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)), an appeal is presumed to be timely if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. An appeal submitted by facsimile transmission (fax) is deemed to have been sent on the day it is received. Rule 102.5(f)(1). Section 410.202(d) was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Under the amended provision, 15 days from the carrier's actual receipt of the hearing officer's decision would have been May 13, 2004. The carrier faxed its appeal on May 13, 2004, and the appeal was file stamped as being received by the Commission on May 13, 2004. Therefore, the carrier's appeal is timely.

The issues of injury, extent of the injury, disability, and carrier waiver were questions of fact for the hearing officer. Conflicting evidence was presented regarding the issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying the standard of review outlined above, we find no reversible error.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Edward Vilano  
Appeals Judge